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SILVAM SELLAPAN & ANOR v. TAMIL SELVAM VELUSAMY & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
NORDIN HASSAN JCA
B MARIANA YAHYA JCA
[CIVIL APPEAL NO: B-01(NCVC)(W)-374-08-2020]
25 JANUARY 2023

C **Abstract** – *Trustees are not registered owners of a land and have no right to transfer a land to any other entity. Any transfer obtained by way of an insufficient instrument and in clear violation of a declaration of trust ought to be set aside. In such case, there should be a reversion to the status quo ante; the name of the rightful owner should be restored to the issue document of title.*

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LAND LAW: *Ownership – Dispute – Dispute over ownership of parcel of land on which Government-aided school sits and operates – Trustees transferred land from school to charitable entity – Whether done in violation of declaration of trust – Whether transfer obtained by insufficient instrument – Whether transfer valid – Whether school legal entity that can hold land or otherwise entitled to hold land by being beneficiary of trust*

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TRUSTS: *Trustees – Dispute on ownership of land – Parcel of land on which Government-aided school sits and operates – Trustees transferred land from school to charitable entity – Whether done in violation of declaration of trust – Whether transfer obtained by insufficient instrument – Whether transfer valid – Whether school legal entity that can hold land or otherwise entitled to hold land by being beneficiary of trust*

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This case concerned a dispute over ownership of a parcel of land on which a Government-aided school, the Sekolah Jenis Kebangsaan (Tamil) Vivekananda ('school') sits and operates. The tussle was between those who now run the school, the Board of Governors and the Parent Teacher Association and the Vivekananda Ashrama of Kuala Lumpur. The fourth respondent ('Ashrama') was a charitable entity originally founded in 1904 to carry out educational, spiritual, cultural and welfare activities. The Ashrama opened the school on the land in question on 6 January 1958. On 15 October 1958, the Ashrama applied for alienation of the land in question from the Selangor Government. The Ruler in Council (now State Authority) granted a lease for a period of 60 years. The owner in the lease document which was the Roll of Approved Applications was the Vivekananda Tamil School. The lease was due to expire in November 2019. However, before the lease expired, a separate issue document of title ('IDT') was issued in the name of 'The Vivekananda Tamil School' on 19 May 2004. Again, it was not

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issued in the name of the Ashrama. The new lease was also for a period of 60 years from 2004. The first appellant was the Chairman of the school's Board of Governors ('BOG') while the second appellant was the Chairman of the Parent Teacher Association of the school ('PTA'). The first to third respondents were the former committee members of the school's PTA. The case of the appellants was that the first to third respondents were appointed by the PTA in its annual general meeting (AGM) as trustees to hold the property for the school. They collectively instituted the Board of Trustees. However, they were not permitted to sell or transfer property belonging to the school without permission. Accordingly, on 3 November 2003, the first to third respondents executed a declaration of trust instrument stating that the beneficial ownership of the land was vested in the school and that the relevant authority was in the process of issuing an IDT for the land. The first to third respondents applied to the relevant authority to renew the lease on the land in question. The lease was successfully renewed for a further 60 years on 19 May 2004. However, instead of the land being registered in the name of the trustees in accordance with cl. 5 of the declaration of trust, it was registered in the name of The Vivekananda Tamil School. Subsequently, the appellants averred that on 6 April 2009, the first to third respondents in their capacity as trustees signed an agreement with several individuals including the representatives of the Ashrama and some members of the PTA. The first to third respondents agreed to transfer the land in question to the Ashrama in order to expedite the construction of a new extension building to the school. They then executed the Form 14A transfer forms for a nominal consideration of RM1. The appellants pleaded that they became aware of the fact that the land was transferred and registered in the name of the Ashrama pursuant to the said agreement. They averred that the first to third respondents transferred the land illegally without the authority of the PTA. The appellants disputed the claim of the first to third respondents that they were authorised by the PTA to transfer the land to the Ashrama. In addition, the appellants pleaded that the first to third respondents and the Ashrama had conspired to commit fraud and the tort of conversion. The reliefs sought by the appellants were that the declaration of trust dated 3 November 2004, the agreement dated 6 April 2009 and the Form 14A of the National Land Code ('NLC') that was executed by the first to third respondents were all null and void. The appellants further applied for an order directing that the land be registered in the name of the school or its trustees. The respondents denied committing fraud, conspiracy to commit fraud and the tort of conversion. The High Court dismissed the appellants' suit. Hence this appeal. In the instant suit, the main issues were (i) the validity of the transfer of the land from the school to Ashrama; and (ii) whether the school was a legal entity that could hold land or was otherwise entitled to hold land by being a beneficiary of a trust.

Held (allowing appeal in part)
Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) The first to third respondents were not registered owners of the land at the time they executed Form 14A. The name of the registered owner was 'The Vivekananda Tamil School.' The first to third respondents became transferors only by virtue of their appointment as trustees of the school and the declaration of trust that they executed. Clause 5 of the declaration of trust provided that the trustees shall hold the land on trust for the school subject to the terms and conditions contained in it. The declaration of trust expressly provided that the first to third respondents could not transfer the land without the approval of the school or the PTA. Thus, the transfer of the land to the Ashrama by the first to third respondents must be set aside as it was done in clear violation of the declaration of trust. (paras 28 & 30)

(2) A school is not a legal entity *per se* in whom land can be vested although that was what the State Authority did in this case when a separate title was finally issued. In fact, it could be presumed that the management committee of the PTA, the BOG and the school administration were aware of this issue. That was why the declaration of trust specifically authorised natural persons such as the first to third respondents to act as trustees to hold property on behalf of the school. Since it was common ground that the declaration of trust was executed by the trustees and the same was used to transfer the land, the question arose whether the school could be a beneficiary of a trust and hold land through it. The answer to the above question must be in the affirmative. Section 344 of the NLC clearly recognises that land can be held under a trust. That was why it provided for the inclusion of the name of trustees in the memorial of registration. (paras 32 & 33)

(3) The High Court erred in holding that the title was 'restored' to the Ashrama although the transfer of the land could be impugned. There could be plainly no question of restoring the land to the Ashrama in the first place because even in the Roll of Approved Applications, the name of the owner that was entered on it was 'The Vivekananda Tamil School.' That was the exact reason why when a separate title was issued in 2004, the same name was repeated on it. It may well be that the Ashrama should have been named as the owner in 1959 and in 2004 because of its historical role in founding the school and applying land for it. However, the Ashrama was content with the alienation of the land in the name of the school all these years until after a separate title was issued in 2004. It was the prerogative of the State Authority to alienate the land and thus the complaint should have been addressed to it at the beginning of 1959 or before a separate IDT was issued in 2004. Thus, it could not be a matter of the Ashrama being rightfully 'restored' with

the land through the actions of the first to third respondents who acted in contravention of the express provisions of the declaration of trust. (para 36)

(4) The name entered on the Roll of Approved Applications in 1959 was that of the school. But, even if it could be argued that the Ashrama had 'expectation of title', it was superseded in 2004 when a separate IDT was issued by the State Authority to the school. The proviso to s. 4(1) of the NLC states that any existing right is subject to the provisions of the Act. Furthermore, assuming that the State Authority had erroneously erred in alienating land to the school instead of the Ashrama in 2004, there should have been a counterclaim by the latter in this suit or a judicial review application against the State Authority or Registrar of Titles to obtain a remedy instead of relying on a transfer that could be impugned. (paras 37 & 38)

(5) As the transfer of the land from the school to the Ashrama was not valid, there should be a reversion to the *status quo ante*; the name of the school should be restored to the register document of title and IDT. As the school was not a legal entity that could directly own property, proper parties may apply to the Registrar of Titles under s. 380 of the NLC to vest the land in the name of trustees for the benefit of the school. It was a matter of correction of the name. But this could not be a reason to treat the wrongful transfer of the land to the Ashrama as valid or as 'rightful' restoration of ownership. The matter of 'rightful' ownership was within the purview of the State Authority. However, despite the historical role of the Ashrama in founding and building the school, the State Authority for whatever policy reason issued the IDT in the name of the school. In the premises, it was not for the court to revisit the decision of the State Authority to alienate the land to the school in the absence of a challenge *via* a counterclaim or a judicial review application by the Ashrama. (para 39)

(6) The appellants were natural persons who were suing in their capacity as Chairman of the BOG and the PTA. Furthermore, the Chairmanship of the BOG was a statutory appointment under the Education Act 1996 and the Education (Registration of Educational Institutions) Regulations 1997. In any event, the action commenced by the appellants had public interest litigation element. In the premises, there was no reason why they could not be clothed with *locus standi* to act for the school as the representatives of the BOG and the PTA. (para 42)

Case(s) referred to:

Lembaga Pengelola Sekolah Jenis Kebangsaan (C) Chiao Ching & Ors v. Jemaah Pengurusan Tadika Chiao Ching & Ors [2018] 1 LNS 2110 CA ***(refd)***

Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***

Legislation referred to:
Education Act 1996, s. 2
Government Proceedings Act 1956, s. 5
Land Rules 1930, r. 12
National Land Code, ss. 4(1), 22, 43(a), (b), (c), (d), 340(2)(b), 344, 380, Form 14A

Other source(s) referred to:
David SY Wong, *Tenure and Land Dealings In The Malay States*, p 364

For the appellants - GK Ganesan Kasinathan, Geetha Kesavan Nair, JD Prabh Singh, Thinagaran Batumalai & GS Saran; M/s Thinagaran & Assocs
For the 1st, 2nd & 3rd respondents - Balamurali Ramusamy; M/s RB Murali & Assocs
For the 4th respondent - Ambiga Sreenevasan, Sarah Ho Yixin & Andrea Boo Shyan Sze; M/s Sreenevasan
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[Editor's note: For the High Court judgment, please see Silvam Sellapan & Anor v. Tamilselvam Velusamy & Ors [2020] 1 LNS 1561 (overruled in part).]

Reported by Suhainah Wahiduddin

JUDGMENT

Ravinthran Paramaguru JCA:

Introduction

[1] This case concerns a dispute over ownership of a parcel of land on which a Government-aided school, the Sekolah Jenis Kebangsaan (Tamil) Vivekananda (the school), Jalan Templer, Petaling Jaya sits and operates. The tussle is between those who now run the school (the Board of Governors and the Parent Teacher Association) and the Vivekananda Ashrama of Kuala Lumpur (the fifth respondent/defendant). The latter has been described during oral arguments as the "mothership" from which the school broke away. The High Court dismissed the suit of the appellants mounted on behalf of the Board of Governors and the Parent Teacher Association and ruled in favour of the Vivekananda Ashrama. The instant appeal is against this decision of the High Court.

Background Facts

[2] Before we proceed to discuss the immediate underlying facts of the case and the issues argued in the appeal, it is perhaps apposite to set out some historical facts to place in context the genesis of the dispute. We shall gratefully refer to the High Court's summary of the historical background for this purpose. In particular, we shall refer to the role of the Ashrama in founding the school and obtaining the land in question for its use.

[3] The fourth defendant (the Ashrama) is a company limited by guarantee under the Companies Enactment 1937. It was incorporated on 28 November 1932. It is a charitable entity that was originally founded in 1904 to carry out educational, spiritual, cultural and welfare activities in the then Malaya. The Ashrama opened the school on the land in question on 6 January 1958. Since then, it also opened three other schools in Brickfields and Kuala Lumpur. All the four schools are "Government-aided schools" as defined in s. 2 of the Education Act 1996.

[4] The relevant facts pertaining to the school and land in question in Petaling Jaya are as follows. On 15 October 1958, the Ashrama applied for alienation of the land in question from the Selangor Government. The Ruler in Council (now State Authority) granted a lease for a period of 60 years. The approval was stated in a letter dated 30 November 1959 that was addressed to the Ashrama. The owner in the lease document which is the Roll of Approved Applications (AA) is "The Vivekananda Tamil School". The lease was due to expire in November of 2019. However, before the lease expired, separate issue document of title (IDT) was issued in the name of "The Vivekananda Tamil School" on 19 May 2004. Again, it was not issued in the name of the Ashrama. The new lease was also for a period of 60 years from 2004. It can be fairly said that this is how the land in question became the apple of discord between the Ashrama and its progeny which is the school. The above facts are not in serious dispute. We shall now set out the parties in the suit before addressing the seriously disputed facts.

The Parties

[5] The first appellant is the Chairman of the school's Board of Governors (the BOG). The second appellant is the Chairman of the Parent Teacher Association of the school (the PTA). They were the first and second plaintiffs in the suit.

[6] The first to third respondents are the former committee members of the school's PTA. The fourth respondent is the Ashrama as we said earlier. The first to fourth respondents are the first to fourth defendants in this suit. The fifth respondent is the Registrar of Titles, Selangor.

Case Of The Appellants

[7] The case of the appellant's is that the first to third respondents were appointed by the PTA in its annual general meeting (AGM) as trustees to hold the property for the school. They collectively constituted the Board of Trustees. However, they were not permitted to sell or transfer property belonging to the school without permission. Accordingly, on 3 November 2003, the first to third respondents executed a declaration of trust instrument stating that the beneficial ownership of the land was vested in the school and that the relevant authority was in the process of issuing a separate issue

document of title (IDT) for the land. The first to third respondents then applied to the relevant authority to renew the lease on the land in question. The lease was successfully renewed for a further 60 years on 19 May 2004. However, instead of the land being registered in the name of trustees in accordance with cl. 5 of the declaration of trust, it was registered in the name of "The Vivekananda Tamil School".

[8] The appellants averred that on 6 April 2009, the first to third respondents in their capacity as trustees signed an agreement with several individuals including representatives of the Ashrama and some members of the PTA. The first to third respondents agreed to transfer the land in question to the Ashrama in order "to expedite the construction of a new extension building to the school". Subsequently, they executed the Form 14A transfer forms for a nominal consideration of RM1. The appellants pleaded that in 2004 they became aware of the fact that the land was transferred and registered in the name of the Ashrama pursuant to the said agreement. They averred that the first to third respondents transferred the land illegally without the authority of the PTA. The appellants disputed the claim of the first to third respondents that they were authorised by the PTA to transfer the land to the Ashrama. Furthermore, under the constitution of the PTA, the board of trustees should consist of four trustees and not three. In addition, the appellants pleaded that the first to third respondents and the Ashrama had conspired to commit fraud and the tort of conversion.

[9] The second complaint of the appellants in the suit was that the Ashrama committed the tort of conversion in respect of the sum of RM2 million that was allocated by the Government for use of the school.

[10] The relief sought by the appellants are a declaration that the declaration of trust dated 3 November 2003, the agreement dated 6 April 2009 and the Form of the 14A of National Land Code (NLC) that was executed by the first to third respondents are all null and void. The appellants further applied for an order directing that the land be registered in the name of the school or its trustees. In respect of the RM2 million allocated by the Ministry of Education, the appellants are applying for a refund of the same from the Ashrama with 5% interest from the date of receipt.

The Defence

[11] The first to third respondents filed a joint defence. Upon becoming office bearers of the PTA, they discovered that no separate title had been issued for the land apart from approval entered in the Roll of Approved Applications. For this reason, they executed the declaration of trust and applied to the State Authority for an extension of the lease and issuance of a title. After the title was issued, they faced pressure from the Ashrama to transfer the land to its name. The Ashrama's representatives accused them of committing a land grab. They succumbed to pressure and signed Form 14A. They also averred that the PTA passed a resolution stating that

their action was in the interest of the school and that the transfer of the land to the Ashrama would expedite the construction of an additional school building. They denied committing conspiracy to defraud the school.

[12] The fourth defendant has disputed the right of the respondent to commence the action. They pleaded that the PTA has no legal capacity to hold any property for the school. They referred to the historical role of the Ashrama in the establishment of the school in 1958 and the support given for its success including acquiring a lease from the Ruler in Council in 1959. The first to third respondents admitted their "error" in registering the land in the name of the school upon query by the Ashrama. Pursuant to their admission, the land was registered in the name of the Ashrama. In respect of the Government allocation of RM2 million for the school, the Ashrama pleaded that a total of RM6 million was given for the construction of additional buildings for three schools under its auspices including the school in question. The money was spent for the purpose that it was allocated according to the needs of each of the said schools. The Ashrama also denied committing fraud, conspiracy to commit fraud and the tort of conversion.

[13] The fifth respondent who is the Registrar of Titles averred that the issue document of title was issued on 19 May 2004 on its own initiative. No party applied to extend the old lease. It was registered in the name of "The Vivekananda Tamil School" because the land was previously registered in the Roll of Approved Applications (A.A. under Schedule IV, Land Rule 6(i)) under the same name in 1959. The land was transferred to the Ashrama in 2012 because of the execution of Form 14A by the first to third respondents as trustees of the school.

Decision Of High Court

[14] The learned High Court Judge dealt with a number of issues before dismissing the claim of the appellants. We summarise them here.

[15] The first question that the learned High Court Judge addressed was whether the school, the BOG and PTA are legal entities that are capable of suing. He answered the question in the negative. Secondly, the learned High Court Judge held that the school, the BOG and the PTA have no cause of action because land cannot be alienated to a school, to the BOG and to the PTA.

[16] The third issue addressed by the High Court was about the "expectation of title". As we said earlier, in 1959, the Ruler in Council approved the land upon the application of the Ashrama. The name of the school, *ie*, "The Vivekananda Tamil School" was entered into the Roll of Approved Applications under the then Land Code (FMS). Nonetheless, the learned High Court Judge held that under r. 12 of the Land Rules 1930, the Ashrama has rights by way of "expectation of title".

[17] The fourth issue decided by the High Court was the validity of the declaration of trust. It must be recalled that the first to third respondents as trustees appointed by the PTA executed the declaration of trust which was purportedly used to sign Form 14A to transfer the land to the Ashrama although under its terms they cannot do so without the authority of the PTA. However, the learned High Court Judge held that the declaration of trust is invalid because "the School is not a legal person". His Lordship held that the "declaration of trust fails for want of a beneficiary that is a legal entity". His Lordship also held that the school cannot be registered as owner of the land under s. 43(a) to (d) of the NLC. The said provision refers to legal entities to which land can be alienated by the State Authority.

[18] The fifth issue addressed by the learned High Court Judge was about the act of the Registrar of Titles in registering the school as the owner of the land. After having found that a school is not a legal entity, the learned High Court Judge held that the registration was "invalid". However, the learned High Court Judge did not nullify or set aside the alienation of the land following his finding that the school is not a legal entity and that registration in its name was "unlawful". It must be noted that the Ashrama had not counterclaimed for this remedy either. His Lordship held that the agreement that the first to third respondents signed on 6 April 2009 with the Ashrama and the transfer of the land had "rightfully restored" the title to the Ashrama because of the "expectation of title" and its role in founding the school.

[19] The sixth issue addressed by the learned High Court Judge was the plea of fraud against the Ashrama. His Lordship dismissed the plea for lack of evidence and for the same reasons given earlier; the historical connection of the Ashrama with the land. It applied for the land in 1959. The Ruler in Council granted the application. It paid quit rent, built and managed the school.

[20] The seventh issue was about s. 380 of the NLC which is about the correction of errors in documents of title. His Lordship held that the error about the address of the Ashrama on the register document of title (RDT) could be corrected.

[21] The eighth issue was about the defence afforded in s. 22 of the NLC and s. 5 of the Government Proceedings Act 1956 to the Registrar of Titles if its officers acted in "good faith". His Lordship held that the Registrar of Titles can avail this defence on the facts of this case.

[22] The final issue was about the Government grant of RM2 million for the school. His Lordship dismissed this claim of the appellants because it is evident from the letters of the Ministry of Finance that the grant was given to the Ashrama for the construction of additional buildings. The grant was not given to the BOG or the PTA.

Issues In The Appeal

[23] In the instant suit, the principal complaint of the appellants was that the land that was registered in the name of the school was transferred to the name of the Ashrama. Thus, the main issue should be the validity of the transfer of the land. The other crucial issue would be whether the school is a legal entity that can hold land or is otherwise entitled to hold land by being a beneficiary of a trust. We shall deal with the other issues either in the course of discussing the above-mentioned core issues or in the later part of this judgment.

Validity Of Transfer Of Land To The Ashrama

[24] In our opinion, the crucial issue in this case is the validity of the transfer of the land from the school to the Ashrama in 2012. The statement of claim is premised on the alleged wrongful act of the first to third respondents as trustees who transferred the land to the Ashrama by signing Form 14A.

[25] We shall recapitulate some of the essential facts to understand this issue. The land in question was originally applied for the school by the Ashrama in 1958. However, when the lease was issued, the name entered in the Roll of Approved Applications was not the Ashrama. It was "The Vivekananda Tamil School". This fact was pleaded in the defence of the Registrar of Titles. As submitted by counsel for the appellants, no attempt was made since 1959 by the Ashrama for the lease to be re-issued in its name. It was also pleaded in the defence of the Registrar of Titles, that when a separate title was finally issued in 2004, it was done on the initiative of the State Authority. The new title was registered in the name of "The Vivekananda Tamil School" simply because the land was previously registered in that name. But the land is now in the name of the Ashrama because of the execution of Form 14A by the first to third respondents in favour of the Ashrama.

[26] The appellants have challenged the validity of the transfer by the first to third respondents based on the following facts which are incontestable. The first to third respondents became trustees of the land by virtue of the declaration of trust executed on 3 November 2003. At that time, IDT for the land had not been issued yet. At the annual general meeting of the PTA of the school, it was agreed that a board of trustees constituting four persons be set up and the management committee was given the mandate to make the appointments. Pursuant to the said AGM, the first to third respondents were appointed as trustees and they executed the declaration of trust. The instrument specifically provided that they cannot transfer, assign or encumber the land unless directed to do so by the PTA or the school. In the statement of defence, the first to third respondents pleaded that they signed Form 14A under "pressure" from the Ashrama.

[27] Counsel for the appellant submitted that the learned High Court Judge failed to consider that the title of the Ashrama was defeasible because the transfer was effected by insufficient or void instrument and fraud. The learned High Court Judge found that there was insufficient evidence to support fraud on the part of the Ashrama in obtaining the land. We are not minded to disturb this finding of fact. In respect of the issue of void instrument, he found the declaration of trust to be invalid but he did not set aside the transfer.

[28] However, we are of the respectful view that the learned High Court Judge should have considered whether the transfer was obtained by insufficient instrument. Our reasons are as follows. The following facts are plain on the face of the crucial documents. The first to third respondents were not registered owners of the land at the time they executed Form 14A. The name of the registered owner was "The Vivekananda Tamil School". The first to third respondents became transferors only by virtue of their appointment as trustees of the school and the declaration of trust that they executed. Clause 5 of the declaration of trust provided that the trustees shall hold the land on trust for the school subject to the terms and conditions contained in it. The declaration of trust expressly provided that the first to third respondents cannot transfer the land without the approval of the School or the PTA. In the instant case, it was established in evidence that the declaration of trust was not deposited together with the memorandum of transfer. In fact, the witness of the Registrar of Titles confirmed in court that if the declaration of trust was used to transfer the land by the first to the third respondents, a copy of the same should have been deposited with the memorandum of transfer. This failure was never explained by the solicitors who were involved in the transaction.

[29] In *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944 that was cited by counsel for the appellants, the Federal Court considered the meaning of "insufficient or void instrument" in s. 340(2)(b) of the NLC that can defeat a transfer. It was held to have a wide meaning. The Federal Court quoted with approval the following passage from "*Tenure and Land Dealings In The Malay States*" by David SY Wong at p. 364:

> (iv) "Insufficient or void instrument" S. 340(2)(b) also provides that a registered title is defeasible where registration was obtained "by means of an insufficient or void instrument". Unlike "forgery", the expression "insufficient or void instrument" is so wide as to defy comprehensive enumeration of the circumstances in which a purportedly executed instrument of dealing may be regarded by the court as "insufficient" or "void". Some general observations may indicate how wide its domain may be. *The reference to the insufficiency and voidness of an instrument could pertain to all sorts of circumstances and matters relating to the execution of the instrument. Where the instrument is executed in pursuance of a contract of dealing, the invalidity of contract (ie, where the contract is void) would plainly entail that the instrument is void accordingly*. The instrument may also be "insufficient"

or "void" for reasons relating to the capacity of the parties concerned, or by reason of some formal defect or irregularity. In addition, non-compliance with relevant statutory requirements may also result in the instrument being regarded as "insufficient" or "void". (emphasis added)

[30] In the instant case, the transfer of the land to the Ashrama by the first to third respondents must be set aside as it was done in clear violation of the declaration of trust. We shall now consider the related issue in respect of the beneficial ownership of the land by the school.

Whether School Can Be A Beneficial Owner *Via* A Trust?

[31] The learned High Court Judge held that the alienation of the land to the school when a separate title was issued in 2004 contravened s. 43 of the NLC. The provision states the entities to whom land can be alienated by the State Authority. It reads as follows:

Subject to the provisions of Part Thirty-three (A), the powers of disposal conferred on the State Authority by s. 42 may be exercised only in favour of, and applications for their exercise may be accepted only from, the following persons and bodies:

(a) natural persons other than minors;

(b) corporations having power under their constitutions to hold land;

(c) sovereigns, governments, organisations and other persons authorised to hold land under the provisions of the Diplomatic Privileges (Vienna Convention) Act 1966 [Act 636], the International Organizations (Privileges and Immunities) Act 1992 [Act 485] and the Consular Relations (Vienna Convention) Act 1999 [Act 595];

(d) bodies expressly empowered to hold land under any other written law:

Provided that it shall not be necessary for a corporation to have power to hold land in order for it to be able to apply for, and be issued with, a permit to extract and remove rock material.

[32] The learned High Court Judge also referred to various legislation governing the administration of schools in the past and now and held that a school is not a legal entity that can own land. We do not disagree with the decision of the High Court that a school is not a legal entity *per se* in whom land can be vested although that is what the State Authority did in this case when a separate title was finally issued. In fact, it can be presumed that the management committee of the PTA, the BOG and the school administration were aware of this issue much earlier in 2003. That is why the declaration of trust specifically authorised natural persons such as the first to third respondents to act as trustees to hold property on behalf of the school. We shall discuss the legal consequence of the decision of the State Authority to register the land in the name of the school later. But since it is common

ground that the declaration of trust was executed by the trustees and the same was used to transfer the land, the question arises whether the school can be a beneficiary of a trust and hold land through it.

[33] In our opinion, the answer to the above question must be in the affirmative for the following reasons. Section 344 of the NLC clearly recognises that land can be held under a trust. That is why it provides for the inclusion of the name of trustees in the memorial of registration. In the case of *Lembaga Pengelola Sekolah Jenis Kebangsaan (C) Chiao Ching & Ors v. Jemaah Pengurusan Tadika Chiao Ching & Ors* [2018] 1 LNS 2110; [2018] MLJU 1833 that was cited by counsel for the appellants, the Court of Appeal recognised a trust over land in favour of a kindergarten and a Government school. There was no argument that a trust cannot be created in favour of a Government school or that it contravened s. 43 of the NLC. In the premises, even if a school is not a legal entity that can come under the said provision, there is nothing to prevent a school from owning land through a trust created in its favour.

Finding Of High Court That The Ashrama's Title Was "Restored"

[34] In the instant case, the learned High Court Judge actually found that the declaration of trust is invalid because the school is not a legal entity that can own land. As we said earlier, it was the declaration of trust that enabled the first to third respondents to transfer the land to the Ashrama. Nonetheless, following this finding, His Lordship did not set aside the transfer of the land to the Ashrama. Instead, His Lordship gave the stamp of approval to the transfer of the land to the Ashrama although it was effected through the declaration of trust which he held to be invalid. His Lordship considered that the land had been rightfully "restored" to the Ashrama. This finding is found in the following passage of the judgment:

> [47] In this case, the court need not set aside the unlawful fifth defendant's registration (school). This is because the agreement (6 April 2009) and land transfer have rightfully "restored" the title to land in favour of the fourth defendant. Consequently, I have no hesitation to uphold the validity of the agreement (6 April 2009) because of the fourth defendant's expectation of Title which has been preserved by s. 4(1) NLC. I will discuss the legality of the Land Transfer in Part I below.

[35] The reason for the above decision is the historical connection of the Ashrama to the land. It was the Ashrama that applied to the Ruler in Council (now State Authority) for the land in 1958 under the old Land Code (FMS). As we noted earlier, once approval was given, it was entered on the Roll of Approved Applications although separate title was not issued. The learned High Court Judge held that the Ashrama had "expectation of title" under the Land Rules 1930 because it occupied the land, expended time, money and effort to build the school and the approval was never revoked. Thus, the

learned High Court Judge held that the Ashrama's "expectation of title" was "enforceable in equity against the world at large (except the Ruler in Council)". His Lordship also held that the "expectation of title" was preserved under s. 4(1) of the NLC which reads as follows:

> (1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act:
>
> Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act.

[36] In our view, the High Court erred in holding that the title was "restored" to the Ashrama although the transfer of the land can be impugned. Our reasons are as follows. There can be plainly no question of restoring the land to the Ashrama in the first place because even in the Roll of Approved Applications, the name of the owner that was entered on it was "The Vivekananda Tamil School". That is the exact reason why when a separate title was issued in 2004, the same name was repeated on it. We note that this was also the pleaded case of the Registrar of Titles. It may well be that the Ashrama should have been named as the owner in 1959 and in 2004 because of its historical role in founding the school and applying land for it. However, the Ashrama was content with the alienation of the land in the name of the school all these years until after a separate title was issued in 2004. It is the prerogative of the State Authority to alienate land and thus the complaint should have been addressed to it at the beginning in 1959 or before a separate IDT was issued in 2004. Thus, it cannot be a matter of the Ashrama being rightfully "restored" with the land through the actions of the first to third respondents who acted in contravention of the express provisions of the declaration of trust.

[37] As for the "expectation of title" argument, we noted that the name entered on the Roll of Approved Applications in 1959 was that of the school. But, even if it can be argued that the Ashrama had "expectation of title", it was superseded in 2004 when a separate IDT was issued by the State Authority to the school. The proviso to s. 4(1) of the NLC states that any existing right is subject to the provisions of the Act.

[38] Furthermore, assuming that the State Authority had erroneously erred in alienating land to the school instead of the Ashrama in 2004, there should have been a counterclaim by the latter in this suit or a judicial review application against the State Authority or Registrar of Titles to obtain a remedy instead of relying on a transfer that can be impugned.

A **Effect Of Invalid Transfer Of Land**

[39] In view of our decision that the transfer of the land from the school to the Ashrama is not valid, there should be a reversion to the *status quo ante*; the name of the school should be restored to the RDT and IDT. As the school is not a legal entity that can directly own property as found by the learned B High Court Judge, proper parties may apply to the Registrar of Titles under s. 380 of the NLC to vest the land in the name of trustees for the benefit of the school. It is a matter of correction of the name. But this cannot be a reason to treat the wrongful transfer of the land to the Ashrama as valid or as "rightful" restoration of ownership. The matter of "rightful" ownership C was within the purview of the State Authority. However, despite the historical role of the Ashrama in founding and building the school, the State Authority for whatever policy reason issued the IDT in the name of the school. In the premises, it is not for the court to revisit the decision of the State Authority to alienate the land to the school in the absence of a challenge D *via* a counterclaim or a judicial review application by the Ashrama.

[40] In concluding this part of the judgment, we would observe *en passant* that if the argument that the alienation of the land to the school was unlawful because it is not a legal entity is taken to its logical conclusion, the unfortunate result will be that the land may revert to become State land. This E outcome will not benefit the school or the Ashrama or the larger interests of Tamil education. Fortunately for all, this argument was not advanced by the Registrar of Titles.

Government Grant Of RM2 Million

F **[41]** In respect of this part of the claim of the appellants, we agree with the decision of the High Court and we are not minded to disturb it. The donation was given by the Government to the Ashrama and not to the PTA or the BOG. This is evident in the letters of the Ministry of Finance that were referred to by the learned High Court Judge. It is not for the court to G re-allocate Government grants based on the complaint of the appellants that the school should have been the rightful recipient. The complaint in respect of this matter should have been addressed to the Government earlier.

***Locus Standi* Of The Appellants**

[42] The High Court held that the BOG and PTA are not legal entities that H can file this action. It may well be that the BOG and PTA are not legal entities who can sue in their own names as found by the learned High Court Judge. However, the instant appellants are natural persons who are suing in their capacity as Chairman of the BOG and the PTA. Furthermore, the chairmanship of the BOG is a statutory appointment under the Education Act I and the Education (Registration of Educational Institutions) Regulations

1997. In any event, the action commenced by the appellants has public interest litigation element. In the premises, there is no reason why they cannot be clothed with *locus standi* to act for the school as the representatives of the BOG and the PTA.

Liability Of The Registrar Of Titles

[43] This issue was not pursued before us by the appellants. In any event, we agree with the High Court's finding that the Registrar of Titles acted in good faith and therefore can avail the defence in s. 22 of the NLC and s. 5 of the Government Proceedings Act.

Conclusion

[44] Having regard to our decision on the above issues, we allowed the appeal in part. We set aside the impugned transfer and restored the land to the school. Accordingly, we allowed prayers (a), (b), (c) and (e) of para. 31 of the amended statement of claim. We did not make an order for assessment of damages against the Ashrama as no loss was proved in the evidence. We ordered costs of RM40,000 here and below against the Ashrama (fourth respondent) in favour of the appellants which is subject to allocatur. We set aside the order of costs of RM6,000 in favour of the Registrar of Titles (fifth respondent) that was made in the High Court. No order as to costs in favour of the fifth respondent here. No order as to costs against the first to third respondents.